

<sup>2</sup> The Board notes that, following the issuance of the September 14, 2020 OWCP decision, appellant submitted new evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.

### **FACTUAL HISTORY**

On August 14, 2000 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2000 he sustained neck and arm injuries when he was involved in a motor vehicle accident while in the performance of duty. OWCP accepted the claim for cervical and left shoulder strains and left shoulder contusion. It subsequently expanded acceptance of the claim to include cervicalgia, adjustment disorder with depressed mood, brachial neuritis or radiculitis, and cervicobrachial syndrome. Appellant stopped work on August 11, 2000 and OWCP initially paid appellant intermittent wage-loss compensation on the supplemental rolls. It paid appellant wage-loss compensation on the periodic rolls as of October 5, 2003.

On November 15, 2017 OWCP provided SSA with a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form.

On December 26, 2017 OWCP received from SSA a December 19, 2017 FERS/SSA dual benefits calculation form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since September 2017. The form provided SSA benefit rates with and without a FERS offset.

On October 30, 2019 OWCP again provided SSA with a FERS/SSA dual benefits calculation form.

On December 4, 2019 OWCP received from SSA a FERS/SSA dual benefits calculation form, dated November 13, 2019, which indicated that appellant had been in receipt of SSA age-related retirement benefits since September 2017. The form indicated SSA benefit rates with and without a FERS offset. Beginning September 1, 2017, appellant's SSA rate with FERS was \$1,423.00 and without FERS was \$723.00. Beginning December 1, 2017, appellant's SSA rate with FERS was \$1,452.00 without FERS was \$737.00. Beginning December 1, 2018, appellant's SSA rate with FERS was \$1,492.50 without FERS was \$757.50.

On December 23, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's overpayment from September 1, 2017 through December 7, 2019. The total overpayment was determined to be \$19,717.42. The worksheet indicated that an overpayment was created from September 1 through November 30, 2017 in the amount of \$2,100.00, from December 1, 2017 through November 30, 2018 in the amount of \$8,603.57, and from December 1, 2018 through December 7, 2019 in the amount of \$9,013.85.

On February 5, 2020 OWCP issued a preliminary determination finding that an overpayment of compensation in the amount of \$19,717.42 had been created. It explained that the overpayment occurred because appellant's FECA benefits were not reduced by the FERS portion of his SSA age-related retirement benefits for the period September 1, 2017 through December 7, 2019. OWCP found appellant without fault in the creation of the overpayment and

forwarded an overpayment action request form and overpayment recovery questionnaire (Form OWCP-20). It requested that he provide supporting documentation including income tax returns, bank account statements, bills, cancelled checks, pay slips, and any other records, which supported income and expenses. OWCP afforded appellant 30 days to respond.

On March 9, 2020 appellant noted his disagreement regarding the overpayment and requested a prerecoupment hearing on the issues of fault and waiver of recovery of the overpayment before a representative of OWCP's Branch of Hearings and Review.

During the hearing held on July 2, 2020, appellant testified regarding his income and expenses.

On July 28, 2020 OWCP received a partially-completed Form OWCP-20 dated July 14, 2020, and supporting financial documentation. Appellant reported that he had four dependents including his 36-year-old daughter and three grandsons. He listed his total monthly income as \$1,238.29, which included \$1,166.20 in SSA benefits and \$72.09 in Department of Veterans' Affairs benefits. Appellant listed his monthly expenses totaling \$2,675.00. He listed assets of \$300.00 in a checking account and \$300.00 in a savings account, totaling \$600.00. No supporting financial documentation accompanied the completed Form OWCP-20.

By decision dated September 14, 2020, a hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$19,717.42 for the period September 1, 2017 through December 7, 2019 because OWCP failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. She further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment of compensation because he failed to provide any financial documentation to support the income, expenses, and assets on his partially completed Form OWCP-20. The hearing representative concluded that there was no evidence to substantiate that recovery of the overpayment would either defeat the purpose of FECA or be against equity and good conscience. She indicated that the overpayment would be recovered by withholding \$250.00 from appellant's continuing compensation payments every 28 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>3</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

federal service of the employee.<sup>5</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,717.42 for which he was without fault because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period September 1, 2017 through December 7, 2019.<sup>7</sup>

In the September 14, 2020 decision, OWCP's hearing representative found that an overpayment of compensation was created for the period September 1, 2017 through December 7, 2019. The overpayment was based on the evidence that, while appellant was receiving compensation for total disability under FECA, he was also receiving SSA age-related retirement benefits. A claimant cannot receive both compensation for wage-loss and SSA age-related retirement benefits attributable to federal service for the same period.<sup>8</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period September 1, 2017 through December 7, 2019. Consequently, the fact of overpayment has been established.<sup>9</sup>

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to appellant's federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided the SSA rates with FERS, and without FERS for specific periods commencing September 1, 2016 through December 7, 2019. OWCP provided its calculations for each relevant period based on the SSA worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period September 1, 2017 through December 7, 2019 and finds that an overpayment of compensation in the amount of \$19,717.42 was created.<sup>10</sup>

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<sup>5</sup> 20 C.F.R. § 10.421(d); *see B.G.*, Docket No. 20-0541 (issued April 28, 2021); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997; *see also P.N.*, Docket No. 20-1159 (issued April 20, 2021); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>7</sup> *B.G.*, *supra* note 5; *T.B.*, Docket No. 18-1449 (issued March 19, 2019).

<sup>8</sup> *See P.N.*, *supra* note 6; *E.K.*, Docket No. 18-0587 (issued October 1, 2018).

<sup>9</sup> *B.G.*, *supra* note 5; *L.M.*, Docket No. 19-1197 (issued January 8, 2020).

<sup>10</sup> *See B.G.*, *supra* note 5; *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup> The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.<sup>12</sup>

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>13</sup> Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.<sup>14</sup>

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.<sup>15</sup> Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.<sup>16</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

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<sup>11</sup> 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see B.G.*, *supra* note 5; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

<sup>12</sup> *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *see Robert Atchison*, 41 ECAB 83, 87 (1989).

<sup>13</sup> 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2018).

<sup>14</sup> *Id.* at § 10.437(a)(b).

<sup>15</sup> *Id.* at § 10.438(a); *P.N.*, *supra* note 6; *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

<sup>16</sup> *Id.* at 10.438(b).

As OWCP found that appellant was without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.<sup>17</sup>

While appellant submitted a partially-completed Form OWCP-20 dated July 14, 2020, he failed to furnish financial documentation to support his income and expenses. The Board finds that, in the absence of complete and current documentation of appellant's income, expenses and assets, the evidence is insufficient to establish that recovery of the overpayment would defeat the purposes of FECA or be against equity and good conscience.

As appellant failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 every 28 days from appellant's continuing compensation payments.<sup>20</sup>

The record supports that, in requiring recovery of the overpayment by deducting \$250.00 from appellant's compensation payments every 28 days, OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on appellant. Appellant failed to provide sufficient information regarding his income, expenses, and assets, and OWCP followed minimum collection guidelines by requiring installments large enough to collect the full debt promptly. Therefore, the Board finds that OWCP properly required recovery of the overpayment by deducting \$250.00 from his continuing compensation payments every 28 days.<sup>21</sup>

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<sup>17</sup> *Id.* at § 10.436.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at § 10.441, *see B.G., supra* note 5; *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>20</sup> *L.D.*, Docket No. 19-1423 (issued March 2, 2020).

<sup>21</sup> Federal (FECA) Procedure Manual, *supra* note 13 at Chapter 6.500.8(c)(1) (September 2018).

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$19,717.42 for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period September 1, 2017 through December 7, 2019, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$250.00 every 28 days from his continuing compensation payments.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board